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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,885	04/04/2002	Alain Milius	S 5015 PCT/US	8599

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EXAMINER

CLARDY, S

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 06/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,885

Applicant(s)

Alain et al

Examiner

S. Mark Clardy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Mar 18, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-18 and 20-24 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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New claims 15-24 are pending in this application which has been filed under 35 USC 371 as a national stage application of PCT/FR00/01740, filed May 22, 2000. This application possesses unity of invention under 37 CFR 1.475 (MPEP 1850, 1893.03(d)). Original claims 1-14 have been canceled.

Applicants' claims are drawn to phytosanitary (p. 3: fungicidal, insecticidal, herbicidal) compositions, and methods of using them, comprising:

1. At least one "phytosanitary active principle"¹
2. At least one modified vegetable oil², either ethoxylated (EO 30-40), or C₁₄ esterified and ethoxylated (EO 8-15).

All examples use glyphosate in combination with ethoxylated rapeseed oil, or the methyl ester or ethoxylated rapeseed oil.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 22 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim now recites compositions "in which the active principle is a compound of chemical structure derived from the radical -C(=O)-CH₂-N-CH₂-P(=O), and glyphosate or N-phosphonomethylglycine". First, glyphosate is N-phosphonomethylglycine; thus, it is redundant to

¹Claims 19, 22: glyphosate

²Claims 16, 18, 21, 24: **sunflower**, linseed, soybean, corn, peanut, copra, olive, palm, **rapeseed**

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use both terms. Second, it appears that the intent is to require the active principle to be a compound such as glyphosate (which has the structure $\text{HOOC-CH}_2\text{-NH-CH}_2\text{-P(=O)(OH)}_2$); however, a strict reading of the claim indicates that it is to be a compound derived from the recited structure AND glyphosate, i.e., a compound in which two of the described radicals are joined.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-18, 20, 21, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Iwasaki (US 4,681,900), and Nielsen et al (US 6,180,566).

Iwasaki teaches biocide activators comprising a propoxylated or ethoxylated/propoxylated fatty acid triglyceride and polyhydric alcohol derivative which enhances the biocidal effect of insecticides, fungicides, herbicides, and plant growth regulators (abstract, columns 1-2). The fatty acid triglycerides are, for example, vegetable fats and oils such as palm oil, castor oil, rapeseed oil, soybean oil, olive oil, linseed oil, corn oil, etc. (col 1, lines 52-68). Various specific active agents are disclosed (columns 3-4) including glyphosate (col 4, line 40).

Nielsen et al, again, teach herbicide preparations comprising glyphosate or glufosinate in combination with ammonium sulfate (abstract) and various surfactants (columns 10-11) including the preferred nonionic surfactants ethoxylated, propoxylated, or co-ethoxylated/propoxylated vegetable oils such as ricinus oil (i.e., castor oil, col 11, lines 9-11).

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One of ordinary skill in the art would be motivated to combine these references because they disclose the combination of herbicides such as glyphosate with alkoxylated vegetable oil surfactants.

Thus it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined applicants' components because they were known in the herbicidal art, and because the modified vegetable oils as used herein were also known as surfactants for herbicidal, specifically glyphosate, compositions. While the specific ranges for the degree of ethoxylation are not taught in the prior art, it would be within the skill level of the ordinary artisan to determine an appropriate range of ethoxylation.

Applicants have presented data demonstrating the criticality of the degree of ethoxylation for the vegetable oil components used in glyphosate compositions. Note, however, that objective evidence of nonobviousness must be commensurate in scope with the scope of the claims. In re Tiffin, 171 USPQ 294. A showing limited to a single species can hardly be considered probative of the invention's nonobviousness in view of the breadth of the claims. In order to overcome the finding of obviousness for the generic claims, the criticality of applicants' recited degree of ethoxylation will need to be established for more herbicides than just glyphosate, and more biocides than just herbicides. (Note also that a method of treatment by "foliar absorption" as in claim 15 does not appear to be appropriate for insecticides or fungicides since they act not on plants, but on other pests that do not have foliage.)

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Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103c and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is (703) 308-4550.



S. Mark Clardy
Primary Examiner
AU 1616

May 29, 2003